STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	Docket No. 00-0596
Revision of 83 Ill. Adm. Code 730	)	

REPLY BRIEF ON EXCEPTIONS OF VERIZON NORTH INC. AND VERIZON SOUTH INC.

Verizon North Inc. (f/k/a GTE North Incorporated) and Verizon South Inc. (f/k/a GTE South Incorporated) (collectively referred to as "Verizon"), through its attorneys, hereby submit to the Illinois Commerce Commission ("Commission") this Reply Brief on Exceptions to the Administrative Law Judge's Proposed Order ("Proposed Order").

I. Introduction

Verizon demonstrated in its Brief on Exceptions that certain conclusions set forth in the Proposed Order require amendment, and that the attached Proposed Rule requires modification. In this Reply Brief on Exceptions, Verizon will demonstrate that the exceptions of the City of Chicago ("City"), and The People of the State of Illinois and the Citizens Utilities Board ("CUB/AG"), as well as certain exceptions of various competitive local exchange carriers ("CLECs") and the Commission Staff ("Staff") are unlawful, inconsistent with the record, and/or contrary to sound regulatory policy. These issues are discussed in turn below.

II.
Argument

A. The City's Exceptions Are Contrary To The Record Evidence And Should Be Rejected In Total

1. Record Retention

The City raises three exceptions to the Proposed Order, each of which are unpersuasive and lack merit. First, the City continues to seek additional record retention requirements as part of Part 730. (City Brief on Exceptions ("BOE"), pp. 1-4). The Proposed Order, however, properly found that the City's proposed requirements where unnecessary.

In support of its position, the City claims that the Ameritech and Verizon do not have "record retention information readily available." (City BOE, p. 2). Such a claim is patently wrong. First, there is no evidence whatsoever in the record that either Verizon or Ameritech are failing to comply with the existing record retention rules set forth in Part 705 of the Commission's Rules. 83 Ill.Adm.Code 705. Indeed, the City failed to present any evidence to the contrary. Moreover, the City fails to note that Verizon witness Karen Boswell was not, and is not, responsible for Verizon's record retention activities. As such, the City's claims regarding her testimony are simply disingenuous. Here, again, the City had ample opportunity to seek such information during the pendency of the case but failed to do so. Consequently, the City improperly relies on speculation, and asks the Commission to accept such speculation, as a basis for imposing unnecessary and burdensome record retention rules as part of Part 730.

Additionally, the City claims that such information should be made available to customers, including providing customer information about service prior to the time a customer received service at a particular location. (City BOE, p. 3). Notably, the City provides no citation to the record to support such a proposal. (*Id*.) And, as discussed below in the next section, the City simply failed to provide any compelling evidence to support imposing such conditions on a statewide basis. Moreover, the City's position gives no consideration to the privacy rights of a prior customer, whose service records the City seeks. Hence, the Proposed Order properly rejected this proposal in the first instance.

In Initial Briefs, both Verizon and Ameritech demonstrated that it was unreasonable to create duplicative and/or conflicting record retention rules given the existence of Part 705. (Verizon Init. Br., pp. 14-15; Ameritech Init. Br., pp. 8-9). The Proposed Order properly found that the City's proposal should be rejected. Nothing within the City's exceptions requires an amendment to the Proposed Order.

2. Public Reports

The Proposed Order properly concludes that the City's public reporting proposal should be rejected. (Proposed Order, p. 27). In its exceptions to this decision the City offers nothing new, but rather again relies on the testimony of its witness, Mr. Riolo. (City BOE, pp. 4-5). This City's reliance on Mr. Riolo's testimony is wholly unpersuasive.

Verizon demonstrated in its Initial Brief in this proceeding that Mr. Riolo simply had no knowledge about how carriers other than Ameritech were performing under the existing Part 730 rules. (Verizon Reply. Br., pp. 4-5). For example, Mr. Riolo conducted no examination of the state of basic local exchange service quality provided by local exchange carriers ("LECs") other than Ameritech. (Riolo Tr. pp. 380-83, 386). Accordingly, he had no knowledge as to whether Verizon or any other non-Ameritech LEC was meeting the existing Part 730 standards. (*Id*.) As such, he did not present any evidence concerning the testimony of any non-Ameritech LEC operating in Illinois. And in this regard, Mr. Riolo did not know whether Ameritech was under an obligation to provide service at a standard higher than other LECs as a result of its alternative regulation plan. (*Id*. at 379). In short, the City provided no basis whatsoever for imposing its unduly burdensome proposal on a statewide basis.

Further undermining the City's position is that it has admitted previously that Staff's proposed reporting requirements meet Section 13-712(f) of the Public Utilities Act ("Act"). (City Init. Br., p. 3). Instead, it complains that Staff's proposal does not go far enough. However, as demonstrated above, the City presented no compelling evidence as to why the Commission should impose, on a statewide basis, the unreasonable and unduly burdensome reporting requirements its suggests, particularly when the vast majority of carriers in the state have and continue to provide quality service. Absent such evidence, the Commission should reject the City's exceptions and adopt the Proposed Order on this point.

3. Adequacy Of Service

The Proposed Order properly rejected the City's proposal for including proposed Part 730.500 in the rule. As set forth in the preceding argument, the City completely failed to demonstrate why a host of burdensome regulations should be imposed on a statewide basis. The record demonstrates that customers in a vast majority of the state have not taken issue with the level of service being provided. Indeed, no evidence was presented as to a single customer complaint regarding service quality regarding Verizon or any other non-Ameritech LEC.

In offering its exceptions to the Proposed Order's conclusion the City claims, citing to its Initial Brief, that "[t]he record shows that no carrier disputed the reasonableness of the substance of the City's recommendation." (City BOE, p. 6). Evidently, the City did not read Verizon's Reply Brief, which directly objected to the City's proposal as being unreasonable and unsupported for statewide application. (Verizon Reply Br., p. 28). For the sake of brevity, Verizon incorporates by reference those same objections here.

The City has failed to demonstrate why its burdensome "Adequacy of Service" rules should be applied to all carriers. The Proposed Order properly rejected the City's position and the City offers no compelling reason in its exceptions to reverse the decision. Verizon, therefore, respectfully requests that the City's exceptions on this issue be rejected.

B. CUB/AG's Exceptions Offer No Legal Or Factual Basis To Amend The Proposed Order And Should Be Rejected

CUB/AG propose exceptions that are either contrary to the law, inconsistent with the evidentiary record, and/or are in conflict with sound regulatory policy. Prior to addressing the various claims of CUB/AG, however, it is imperative to better understand the foundation of their proposal. What it reveals is quite telling.

Initially, CUB/AG have admitted that Verizon has been meeting the Commission's existing standards for the provision of basic local exchange service for some time. (CUB/AG Init. Br., p. 3). During the course of this proceeding, CUB/AG presented no evidence that Verizon or any other non-Ameritech LEC was experiencing service quality issues. (TerKeurst Tr., p. 280). Despite the absence of any evidence of service quality problems for the vast majority of LECs in the state, CUB/AG seek to impose a host of new regulations on such carriers. CUB/AG conducted no cost/benefit analysis concerning the impact of their proposals, although it was admitted that their proposals would increase costs to a LEC. (*Id*. at 282). In the end, then, CUB/AG seek to dramatically increase the regulatory burdens, and resulting costs, on LECs throughout the state who are otherwise providing quality basic local exchange service to their customers. Such a result is contrary to the weight of the evidence in this proceeding and sound regulatory policy.

1. Section 13-712 Is Inapplicable To Part 730

CUB/AG's claim that the authority for Part 730 stems, in part, from Section 13-712 is wrong. (CUB/AG BOE, pp. 2-3). To claim, as CUB/AG do, that Section 13-712 is "the authority most relevant to this rulemaking" is patently disingenuous. (CUB/AG BOE, p. 3). Part

730 has been in place for many years preceding the effective date of Section 13-712, which is June 2001. One need only look to the fact that this proceeding was initiated almost 10 months prior to the effective date of Section 13-712, in order to consider amendments to an already existing Part 730. (ICC Docket 00-0596, Initiating Order entered Sept. 7, 2000). The facts demonstrate clearly that Section 13-712 provides no enabling authority for Part 730. In reality, Section 13-712 serves as the basis for Part 732. (*See* ICC Docket No. 01-0485, Order entered Dec. 19, 2001).

In truth, CUB/AG make such a claim in their attempt to persuade the Commission to overlook Section 13-305 of the Act, which imposes a cap on the size of penalties or fines that can be imposed. Notwithstanding the fact that Section 13-712 does not supersede the limitations set forth in Section 13-305 in this regard (*See* Section II. D 2 *infra*), Section 13-712 cannot and should not serve as authority for Part 730. Part 732 contains the standards, credits and reporting requirements contemplated in Section 13-712. Meanwhile, CUB/AG have no answer to the fact that Part 730 had existed for years without the benefit of Section 13-712. In sum, there is no basis to reference Section 13-712 in the Part 730 rule because such an argument is unsupported by the law, the facts, and the Commission's actions in promulgating Part 732.

2. Part 730.115 Reporting Requirements

CUB/AG's proposed reporting requirements violate the Act and should be rejected. Section 13-712(f) of the Act provides the guidelines under which a carrier must report information to the Commission that is:

> disaggregated for each geographic area and each customer class for which the telecommunications carrier internally monitored performance data as of a date 120 days preceding the effective date of this amendatory Act of the 92nd General Assembly.

220 ILCS 5/13-712(f)(emphasis added). Instead of utilizing such data, CUB/AG seek to have carriers use data from federal reporting for state reporting purposes. (CUB/AG Init. Br., pp. 17-18). As Verizon witness Boswell explained during cross-examination, federal reporting is completely different than state reporting. (Boswell Tr., p. 243). In particular, the definitions of terms are different. (*Id*.) This, in turn, results in vastly different federal and state measurements. (*Id*. at 259). As a result, under CUB/AG's proposal LECs would be required to submit state reports that would be inconsistent with the type of data reported to the Commission 120 days prior to the effective date of Section 13-712(f) of the Act. Such a result clearly conflicts with the Act and should be rejected.

In contrast, Verizon supports Staff's proposed reporting requirements. (Verizon Reply Br., p. 23). Staff's proposal conforms with the Act and is reasonable. In light of the Proposed Order's acceptance of Staff's reporting requirements, no amendment to the Proposed Order is required.

3. CUB/AG's Proposed Calculation Methodology For Out-Of-Service Repairs And Installations Is Unsupported In The Record And Should Be Rejected

In its Brief on Exceptions Verizon detailed why CUB/AG's proposed methodology for calculating repair and installation performance was inappropriate. (Verizon BOE, pp. 8-10). In particular, CUB/AG's position was not based on evidence, but rather on new positions first found in its briefs. (*Id*.) The Briefs on Exceptions of all the other carriers and Staff likewise discuss why the Proposed Order's adoption of that methodology is contrary to the record. (Staff BOE, p. 8; Ameritech BOE, pp. 13-20; Allegiance/McLeod/RCN BOE, pp. 11-13). Stated simply, there is no evidentiary basis to support CUB/AG's proposal, and it is a proposal destined to have LECs fail when an emergency situation arises. CUB/AG's position on this point should not be accepted. Instead, Verizon urges the Commission to adopt Staff's proposed calculation methodology.

4. CUB/AG's Proposed Amendments To Proposed Part 730.540 Were Properly Rejected In The Proposed Order

CUB/AG seek to amend the Proposed Order's conclusions that reject their proposal to modify proposed Part 730.540. In doing so, however, they fail to offer any compelling basis to make such a modification. As Verizon demonstrated in its Reply Brief, CUB/AG presented no evidence as to why more stringent standards should be imposed on carriers that are otherwise providing quality basic local exchange service to their customers. (Verizon Reply Br., pp. 31-32). Moreover, as Staff noted, CUB/AG's proposal in this regard provides no meaningful information and, in certain instances, is unreasonable. (Staff Init. Br., pp. 72-73). Accordingly, CUB/AG's exceptions relating to proposed Part 730.540 should be rejected.

5. CUB/AG's Exceptions To Proposed Part 730.545 Should Be Rejected

Like their proposal with respect to proposed part 73-540, CUB/AG seek to increase standards on carriers in proposed Part 730.545 with no factual basis for doing so. CUB/AG's exceptions raise the same arguments that were considered and rejected in the Proposed Order. As set forth in Verizon's Reply Brief, CUB/AG's position ignores that the vast majority of carriers are providing quality service, and there has been no demonstrable need to increase the standards. (Verizon Reply Br., pp. 33-34). Moreover, CUB/AG provided no evidence whatsoever concerning the costs/benefits of their proposal, despite the fact that their witness acknowledged the likelihood of increased costs. (Tr., p. 282). In light of these facts, Verizon urges the Commission to reject CUB/AG's proposal and affirm the Proposed Order's conclusion to use Staff's proposal. (Verizon Reply Br., pp. 33-34).

C. The Proposed Order Properly Rejected The CLECs' Claim For Waiver

The CLECs seek to amend the Proposed Order in an effort to get exempted from various portions of Part 730. (WorldCom BOE, pp. 1-12; Allegiance/McLeod/RCN BOE, pp. 1-10). The Proposed Order did not accept such an argument, noting that all LECs have the same right to seek waivers under Part 730.110. In its Initial Brief, Verizon noted that a similar argument was considered and rejected by the Commission just two years ago in the prior proceeding examining Part 730. (Verizon Init. Br., pp. 10-11). Nothing has changed since that time. And, in fact, CLECs now have more protections that they did only two years ago. (Boswell Dir., Verizon Ex. 1.0, pp. 14-17). Verizon urges the Commission to treat all LECs in a similar fashion in relation to their compliance with Part 730 and, accordingly, adopt the Proposed Order's conclusion on this issue.

D. Staff's Exceptions Addressing The Definition Of "Emergency Situation" And Impact Of Section 13-712 Violates The Law And Should Be Rejected

1. The Definition Of "Emergency Situation"

Staff's position concerning the definition of the phrase "emergency situation" is legally infirm on two grounds. (Staff BOE, pp. 5-8). First, it is Staff's express desire that the definition of the term be consistent with the definition found in Part 732. If so, the Commission's current Part 732 rule provides for a 90-day strike or work stoppage exemption. As the current rule, based upon a Commission Order (*See* Order on Rehearing, ICC Docket 01-0485), it is presumed to be reasonable. *Archer-Daniels-Midland Co. v. Commerce Comm'n*, 184 Ill.2d, 391, 391 (1998). Staff's position, though, violates that principle by assuming that the Commission's existing Order and resulting rule are unreasonable. Such is not the case.

The second problem with Staff's position is that it considers and relies on facts not in evidence in this proceeding. Here, Staff cites to a letter from the Joint Committee on

Administrative Rules ("JCAR") that is not in evidence in this proceeding. (Staff BOE, p. 6). Apparently in an effort to mend this defect, Staff cites to the Order on Rehearing in Docket 01-0485, which cites to the JCAR missive. However, it must be noted that the JCAR letter was not admitted into evidence in that proceeding either, as the evidentiary record was closed well in advance of the June 11, 2002 date found on the correspondence. While it is true that the Commission is again considering the Part 732 rule and its definition of "emergency situation", the JCAR letter is a not a part of this proceeding.

Absent any definitive ruling to the contrary, the Commission's Order adopting a 90-day exemption for strikes or work stoppages is the rule for Part 732. If Staff wishes to conform Part 730 definition of "emergency situation" with the existing Part 732, then Part 730's definition must include a 90-day exemption for strikes and work stoppages.

2. Application Of Section 13-712

Verizon objected strongly to the Proposed Order's conclusions regarding the applicability of Section 13-305 of the Act to Part 730. (Verizon BOE, pp. 5-7). Similarly, Ameritech also presented argument that discussed in detail the legal error found in the Proposed Order on this issue. (Ameritech BOE, pp. 22-23). What these arguments demonstrate is that the Commission's authority to impose fines or penalties is capped under Section 13-305 of the Act.

Staff's BOE appears to suggest that Section 13-712 of the Act somehow gives the Commission authority to impose a fine or penalty beyond the cap limits set forth in Section 13-305. Such an argument is squarely at odds with the Act. If Section 13-712 is applicable, and Ameritech provides good argument as to why it is not, there is nothing in that Section to even suggest that it supersedes the cap provisions set forth in Section 13-305. (Ameritech BOE, pp. 21-23). The reason for that is simple: Section 13-305 establishes the cap for fines and penalties that the Commission may impose.

As set forth in Verizon's Reply Brief and Brief on Exceptions, CUB/AG, and apparently Staff, urge the Commission to make a finding that is in direct conflict with the law. (Verizon Init. Br., pp. 25-27; Verizon BOE, pp. 5-7). Section 13-712(c)'s general grant of authority cannot reasonably be read to pre-empt the very specific civil penalty limits found in Section 13-305.

III.
Conclusion

For the reasons set forth herein, Verizon respectfully requests that the Commission adopt the recommended modifications to the Proposed Order and attached proposed Part 730 rule set forth in its Brief on Exceptions, and adopt the arguments set forth herein.

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Respectfully Submitted,

VERIZON NORTH INC. AND
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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I served the Reply Brief on Exceptions of Verizon North Inc. and Verizon South Inc. upon the service list in Docket No 00-0596 by email on September 13, 2002.

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